THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

-

WRIT APPEAL NO.2036 OF 2005

(DATED: 19.12.2005)

Between:

The Government of India rep. By its Secretary to the Govt.,

Ministry of Industries, Udyog Bhavan, New Delhi & 2 others

…Appellants

A n d

K.Linga Reddy S/o Venkata Reddy

Central Institute of Tool Design, Balanagar, Hyderabad.

…Respondents

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

WRIT APPEAL NO.2036 OF 2005

JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

Heard Sri Kanthi Narahari, the learned standing counsel appearing for the appellants and Sri K. Prakash Reddy, the learned senior counsel appearing for the respondent.

This appeal is at the instance of the Management aggrieved against the order dated 20.08.2005 in Writ Petition No.13643 of 2005 filed by the respondent herein seeking to assail the orders of rejection in regard to an application filed by him for retirement under Voluntary Retirement Scheme.

The few facts, which are necessary for disposal of this appeal, are that in pursuance of the scheme, which has been notified on 01.01.2004, the respondent made an application on 07.01.2004 seeking retirement under the above said scheme. However, as the same was not considered, he filed Writ Petition in W.P.No.13433 of 2004, which was disposed of by this Court on 02.08.2004 directing the appellants to consider his case. In the meanwhile, the appellants transferred the respondent from Hyderabad to Visakhapatnam as per the order dated 19.07.2004 and later on, the appellants passed an order on 11.08.2004 rejecting his request for retirement under

the said scheme. As against the same, the respondent filed Writ Petition in W.P.No.14812 of 2004 and the same was allowed by this Court on 28.12.2004 with a direction to re-consider his case in terms of the directions of this Court in W.P.No.13433 of 2004. Since the same was not taken up, the respondent issued legal notice on 24.02.2005. Ultimately, under the impugned order dated 09.03.2005, the appellants rejected his case on the ground that grant of voluntary retirement to the respondent results not only in abolition of the post of Deputy Director which is essential for manning the operations of the Institute at Hyderabad and other places, but also causes serious dislocation of work. On appeal by the writ petitioner, the appellate authority confirmed the impugned order dated 09.03.2005 on 28.04.2005. Challenging the same, the respondent filed Writ Petition in W.P.No.13643 of 2005 contending *inter alia* on various grounds especially to the effect that the very ground on which his case was rejected does not stand in view of the fact that he was transferred to a place where there is no such training facility. The Learned Single Judge, after taking into consideration the respective submissions, allowed the Writ Petition with a categorical finding that the rejection of the writ petitioner's request is wholly unsustainable, especially when he was sought to be transferred to Visakhapatnam where there is no such training facility.

The learned standing counsel appearing on behalf of the appellants strenuously contended that having regard to the fact that there is need of respondent's services and the 3rd appellant has got ample power to reject his request, he couldn't assail the same.

Having considered the submissions made on either side and on perusal of the material, it is seen that there is no dispute to the fact that in pursuance of the scheme enunciated under the Voluntary Retirement Scheme, the respondent made an application on 07.01.2004 and on two other occasions, this Court directed the appellants to consider the respondent's case in proper perspective, especially, in terms of VRS and at every stage the respondent's case was rejected only on the ground that his services are indispensable. There is no dispute in regard to the power vested with the Management to accept or reject any such application under the said scheme. On perusal of the impugned order, it amply shows that the rejection of the respondent's case is mainly on the ground that his services are indispensable. However, in spite of the orders passed by this Court on 02.08.2004, the appellants have taken a recourse to transfer the respondent herein from Hyderabad to

Visakhapatnam as per the Office order dated 11.08.2004 directing him to comply with the earlier order dated 19.8.2004. The order of transfer does not disclose as to whether there is any such necessity or for what purpose he was transferred when admittedly there is no training facility at Visakhapatnam. If really, the respondent's services are indispensable at Hyderabad, there is no need as such for affecting any such transfer.

Another plea was sought to be raised on behalf of the appellants that if the respondent's request were to be considered, his post would be abolished. Even though his request is considered, there exists more than 5 posts.

An attempt is made by the learned counsel for the respondent that the appellants rejected the respondent's request for retirement under VRS, and instead, with a *mala fide* intention, transferred him from Hyderabad to Visakhapatnam. Having regard to the aforesaid findings and the reasons given by the Learned Single Judge, it is not necessary to go into the question of *mala fide* intention.

From this and other reasons as pointed out, the Learned Single Judge allowed the Writ Petition No.13643 of 2005 and the impugned order dated 28.04.2005 is wholly unsustainable and there is no justification to the appellants to reject the respondent's request. Having regard to the aforesaid findings and also the reasons given by the Learned Single Judge, we do not find any merits in this Appeal.

In the result, the writ appeal is dismissed. No costs.

_____

B. PRAKASH RAO, J

_____

C.Y. SOMAYAJULU, J

19th December 2005.

Chvn.